

AMENDED IN SENATE MAY 2, 1996

SENATE BILL

No. 1992

Introduced by Senator Calderon

February 23, 1996

An act to amend Sections ~~186.22, 186.22a, 186.26, and 186.28~~ of, to add Sections ~~186.22b, 186.22c, 186.22d, 186.22e, 186.22f, 186.22g, and 186.22h~~ to, and to repeal Section ~~186.27~~ of, the Section 186.2 of the Penal Code, relating to crime, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1992, as amended, Calderon. ~~Street terrorism~~ Criminal gang activity: forfeiture.

Existing law, known as the California Control of Profits of Organized Crime Act, provides for the forfeiture of assets of any person convicted of engaging in a pattern of criminal profiteering activity, as defined. This act provides for the distribution of any money forfeited, or the proceeds of sale of any assets forfeited, to specified persons, to state and local entities for specified reimbursement purposes, or to the county's children's trust fund.

This bill would revise the definition of criminal profiteering activity so as to include in that definition any person convicted of engaging in a pattern of criminal gang activity, as defined, thereby making that person's assets also subject to forfeiture under the above act. By increasing the amount of money and assets subject to forfeiture and distribution under that act, the bill would make an appropriation.

~~(1) Existing law, known as the Street Terrorism Enforcement and Prevention Act, provides that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years.~~

~~This bill would repeal the above provision.~~

~~(2) Existing law provides that (a) any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, 2, or 3 years at the court's discretion, and (b) if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, the additional term shall be 2, 3, or 4 years, at the court's discretion.~~

~~This bill would increase the term of imprisonment for the offense specified in (a) above from one, 2, or 3 years to 4, 5, or 6 years, and would increase the term of imprisonment for the offense specified in (b) above from 2, 3, or 4 years to 5, 6, or 7 years. The bill would make conforming changes.~~

~~(3) Existing law provides that every building or place wherein or upon which specified criminal conduct by gang members takes place is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. Existing law also provides that no order of eviction of a tenant or closure of a building may be entered under this nuisance provision.~~

~~This bill would provide that for the building or place to be considered a nuisance the criminal conduct by gang members~~

~~must be on an ongoing basis. The bill would also provide that any activity by members of a criminal street gang that risks injury to the public's health or safety or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance that shall be enjoined, abated, and prevented. This bill would further provide for an order of eviction of a tenant or the closure of a building if the tenant or the owner of the building is convicted of a specified offense.~~

~~(4) Existing law provides that any adult who utilizes physical violence to coerce, induce, or solicit another person who is under 18 years of age to actively participate in any criminal street gang shall be punished by imprisonment in the state prison for one, 2, or 3 years. Existing law further provides that any adult who threatens a minor with physical violence on 2 or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit the minor to actively participate in a criminal street gang shall be punished by imprisonment in the state prison for one, 2, or 3 years or in a county jail for up to one year.~~

~~This bill would revise these provisions to delete the element of "active" participation in any criminal street gang and would increase the term of imprisonment in state prison for these offenses from one, 2, or 3 years to 2, 3, or 4 years.~~

~~(5) Existing law provides that any person who shall knowingly supply, sell, or give possession or control of any firearm to another shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, or in a county jail for a term not exceeding one year, if the person has actual knowledge that the other person will use the firearm to commit a specified felony, the firearm is used to commit the felony, and a conviction for the felony violation has first been obtained of the person to whom the firearm was supplied, sold, or given possession or control.~~

~~This bill would increase the punishment for this offense by eliminating imprisonment in a county jail as a possible sentence.~~

~~(6) The bill would also set forth a procedure for the seizure and forfeiture of assets used in, or derived from, the criminal activity prohibited under the Street Terrorism Enforcement and Prevention Act. The bill would provide for the~~

~~distribution of any money forfeited, or the proceeds of the sale of any assets forfeited, to specified persons and state and local entities for specified reimbursement purposes, including the satisfaction of orders of restitution outstanding against the defendant. By providing for this distribution, this bill would make an appropriation.~~

~~(7) The Street Terrorism Enforcement and Prevention Act is scheduled to be repealed on January 1, 1997. The act contains specified crimes which prohibit specified acts by criminal street gangs as described in part above.~~

~~This bill would delete that scheduled repealer. By extending the duration of the various crimes contained in the act, the bill would impose a state-mandated local program.~~

~~(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: *yes no*.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 186.22 of the Penal Code is~~
- 2 *SECTION 1. Section 186.2 of the Penal Code, as*
- 3 *added by Section 2 of Chapter 1125 of the Statutes of 1993,*
- 4 *is amended to read:*
- 5 186.2. For purposes of the application of this chapter,
- 6 the following definitions shall govern:
- 7 (a) "Criminal profiteering activity" means any act
- 8 committed or attempted or any threat made for financial
- 9 gain or advantage, which act or threat may be charged as
- 10 a crime under any of the following sections:
- 11 (1) Arson, as defined in Section 451.
- 12 (2) Bribery, as defined in Sections 67, 67.5, and 68.
- 13 (3) Child pornography or exploitation, as defined in
- 14 subdivision (b) of Section 311.2, or Section 311.3 or 311.4,
- 15 which may be prosecuted as a felony.
- 16 (4) Felonious assault, as defined in Section 245.

- 1 (5) Embezzlement, as defined in Sections 424 and 503.
- 2 (6) Extortion, as defined in Section 518.
- 3 (7) Forgery, as defined in Section 470.
- 4 (8) Gambling, as defined in Sections 337a to 337f,
- 5 inclusive, and Section 337i, except the activities of a
- 6 person who participates solely as an individual bettor.
- 7 (9) Kidnapping, as defined in Section 207.
- 8 (10) Mayhem, as defined in Section 203.
- 9 (11) Murder, as defined in Section 187.
- 10 (12) Pimping and pandering, as defined in Section 266.
- 11 (13) Receiving stolen property, as defined in Section
- 12 496.
- 13 (14) Robbery, as defined in Section 211.
- 14 (15) Solicitation of crimes, as defined in Section 653f.
- 15 (16) Grand theft, as defined in Section 487.
- 16 (17) Trafficking in controlled substances, as defined in
- 17 Sections 11351, 11352, and 11353 of the Health and Safety
- 18 Code.
- 19 (18) Violation of the laws governing corporate
- 20 securities, as defined in Section 25541 of the Corporations
- 21 Code.
- 22 (19) Any of the offenses contained in Chapter 7.5
- 23 (commencing with Section 311) of Title 9, relating to
- 24 obscene matter, or in Chapter 7.6 (commencing with
- 25 Section 313) of Title 9, relating to harmful matter which
- 26 may be prosecuted as a felony.
- 27 (20) Presentation of a false or fraudulent claim, as
- 28 defined in Section 550.
- 29 (21) Money laundering, as defined in Section 186.10.
- 30 (22) Conspiracy to commit any of the crimes listed
- 31 above, as defined in Section 182.
- 32 (23) *Engaging in a pattern of criminal gang activity, as*
- 33 *defined in subdivision (e) of Section 186.22.*
- 34 (b) “Pattern of criminal profiteering activity” means
- 35 engaging in at least two incidents of criminal
- 36 profiteering, as defined by this act, which meet the
- 37 following requirements:
- 38 (1) Have the same or a similar purpose, result,
- 39 principals, victims or methods of commission, or are
- 40 otherwise interrelated by distinguishing characteristics.

1 (2) Are not isolated events.

2 (3) Were committed as a criminal activity of
3 organized crime.

4 Acts which would constitute a “pattern of criminal
5 profiteering activity” may not be used by a prosecuting
6 agency to seek the remedies provided by this chapter
7 unless the underlying offense occurred after the effective
8 date of this chapter and the prior act occurred within 10
9 years, excluding any period of imprisonment, of the
10 commission of the underlying offense. A prior act may not
11 be used by a prosecuting agency to seek remedies
12 provided by this chapter if a prosecution for that act
13 resulted in an acquittal.

14 (c) “Prosecuting agency” means the Attorney
15 General or the district attorney of any county.

16 (d) “Organized crime” means crime which is of a
17 conspiratorial nature and that is either of an organized
18 nature and which seeks to supply illegal goods and
19 services such as narcotics, prostitution, loan sharking,
20 gambling, and pornography, or that, through planning
21 and coordination of individual efforts, seeks to conduct
22 the illegal activities of arson for profit, hijacking,
23 insurance fraud, smuggling, operating vehicle theft rings,
24 or systematically encumbering the assets of a business for
25 the purpose of defrauding creditors. “*Organized crime*”
26 *also means crime committed by a criminal street gang, as*
27 *defined in subdivision (f) of Section 186.22.*

28 (e) “Underlying offense” means an offense
29 enumerated in subdivision (a) for which the defendant
30 is being prosecuted.

31 This section shall become operative on January 1, 1997.

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**All matter omitted in this version of the
bill appears in the bill as introduced in the
Senate, February 23, 1996 (JR 11)**